



Frank S. Simone
Government Affairs Director

Suite 1000
1120 20th Street, NW
Washington DC 20036
202-457-2321
202-263-2660 FAX
fsimone@att.com

January 3, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

Re: *Ex parte*, CC Docket No. 96-149, Verizon Petition for Forbearance from
the Prohibition of sharing Operating, Installation, and Maintenance
Functions Under Section 53.203(a)(2) of the Commission's Rules

Dear Ms. Dortch:

Please include the attached written ex parte letter in the record of the above-captioned proceeding.

One electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Simone".

cc: P. Arluk
T. Navin



Aryeh S. Friedman
Senior Attorney

Room 3A231
900 Route 202/206 North
Bedminster, NJ 07921
Phone: 908 532-1831
Fax: 908 532-1281
EMail: friedman@att.com

January 2, 2003

VIA E-MAIL

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A-325
Washington, DC 20554

Re: *Verizon Petition for Forbearance from the Prohibition of
Sharing Operating, Installation, and Maintenance Functions Under
Section 53.203(a)(2) of the Commission's Rules, CC Docket No. 96-149.*

Dear Ms. Dortch:

Verizon alleged in its Reply Comments that elimination of the Commission's operating, installation, and maintenance ("OI&M") restriction would save it over \$100 million,¹ but refused to provide the data it claimed supported this allegation "[b]ecause these data are confidential."² Instead, Verizon appended to its Comments an Attachment which simply identified broad "Expense Categor[ies]" and then assigned a "% of Expenses" Verizon claimed were "Driven by Section 272 Requirements."

AT&T Corp.'s ("AT&T's") November 15, 2002 *ex parte* and the accompanying Declaration of Dr. Selwyn explained that neither the public nor the Commission could meaningfully evaluate the validity of Verizon's cost allegation on the basis of the percentages and general category descriptions provided in Verizon's Attachment. To the contrary, it was patently evident that even Verizon's conclusory percentage allocations were neither credible nor complete.³ For example, Dr. Selwyn demonstrated that Verizon's allegation that its section 272 affiliate would save 95% of its expenses for third-

¹ Reply Comments, filed by Verizon on September 24, 2002 at 18.

² *Id.* The withheld data are Verizon's Section 272 affiliate's actual costs for 1998 through 2002 and its projected budget for the 2003 through 2006 period. *Id.* at 18-19.

³ See Selwyn Ex Parte Dec. ¶¶ 2-5.

party "professional services" if it could integrate OI&M appeared to ignore entirely the costs of additional Verizon technicians needed to perform such OI&M services.⁴

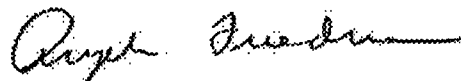
AT&T separately requested that Verizon disclose its back-up data (see Attachment 1 hereto). To alleviate any possible concerns about the confidentiality of the data, AT&T even offered to sign a Protective Order. Verizon, however, refused AT&T's request, on two grounds: first, claiming that the percentages and general category descriptions provided by Verizon in the Attachment "was sufficient for interested parties to comment on Verizon's petition, as demonstrated by AT&T's extensive *ex parte*," and second, claiming that Commission procedures provide "no assurance that that confidential information submitted to the Commission will be withheld from public disclosure." (see Attachment 2 hereto)

Both arguments are without merit. As noted above, provided with only conclusory percentages rather than any data on actual costs, commenters such as AT&T could only comment on the reasonableness of the percentages provided by Verizon. AT&T could not comment on whether Verizon's alleged costs of compliance were properly allocated to the OI&M restriction and the impact of any misallocation, because specific expenses and the costs attributed to them were withheld. Nor could AT&T comment on whether Verizon overstated or misstated its costs without looking at the Section 272 affiliate's actual or projected costs.

Equally important, Verizon's alleged concern that the Commission cannot protect Verizon's confidential information rings hollow in light of the numerous times Verizon has submitted confidential information to the Commission (in the context of various section 271 and merger proceedings) without any evidence that such data has been misused. Indeed, the Commission rejected similar arguments made by Verizon's predecessors in interest when AT&T sought access to relevant confidential data in the BA/GTE merger (Order Ruling on Joint Objections, *In The Matter Of GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control*, CC Docket No. 98-184, 14 F.C.C.R. 3364 (February 23, 1999)), and no claim was ever made that such data was misused.

Unless Verizon grants access to the alleged back-up data, the Commission must disregard Verizon's unsupported allegations regarding the cost of compliance with the OI&M restriction.

Sincerely,



Aryeh Friedman

cc: Joseph DiBella, Verizon

⁴ *Id.* ¶ 2.

Attachment 1



Aryeh S. Friedman
Senior Attorney

Room 3A231
P.O. Box 752
900 Route 202/206 North
Bedminster, NJ 07921-752
Phone: 908-532-1831
Fax: 908 532-1281
EMail: friedman@att.com

November 19, 2002

Overnight Mail
Joseph DiBella
1515 North Court House Road
Suite 500
Arlington, VA 22201

Re: *Verizon Petition for Forbearance from the Prohibition of Sharing
Operating, Installation, and Maintenance Functions Under Section
53.203(a)(2) of the Commission's Rules, CC Docket No. 96-149.*

Dear Mr. DeBella:

AT&T Corp. ("AT&T") hereby requests access to the data substantiating your claim of costs incurred, or that will be incurred, from 1998 through 2006, in complying with the OI&M services restriction. As I understand it from your Reply Comments, that data consists of your Section 272 affiliate's actual costs for the 1998 through 2002 period in the categories you identified in Attachment A thereto, as well as your affiliate's projected budget for the 2003 through 2006 period.¹

Verizon has asserted that it has declined to file this data "[b]ecause these data are confidential."² However the Commission has clear procedures for handling such confidential data. We would propose that you submit your data to the Commission with a request for confidential treatment under section 0.459 of the Commission's rules, 47 C.F.R. 0.459. Assuming the Commission finds some or all of the data to be confidential, AT&T would be willing to sign a reasonably drafted Protective Order.

Thank you for your attention to this matter.

Sincerely,

Aryeh S. Friedman

¹ Reply Comments, filed September 24, 2002, at 18-19.

² *Id.*

Attachment 2

Joseph DiBella
Regulatory Counsel



1515 North Courthouse Road
Suite 500
Arlington, VA 22201
Phone 703 351-3037
Fax 703 351-3676
joseph.dibella@verizon.com

December 13, 2002

Aryeh S. Friedman
Senior Attorney
AT&T
Room 3A231
P.O. Box 752
900 Route 202/206 North
Bedminster, NJ 07921-1831

Re: *Verizon Petition for Forbearance from the Prohibition of Sharing
Operating, Installation, and Maintenance Functions Under Section
53.203(a)(2) of the Commission's Rules, CC Docket No. 96-149*

Dear Mr. Friedman:

This is in response to your letter of November 19, 2002, requesting that Verizon file certain financial information concerning its Section 272 affiliate for the years 1998 through 2006 in the above-referenced proceeding. This information includes the section 272 affiliate's actual costs for the years 1998 through 2002, by accounting category, as well as its budgeted costs for the years 2003 through 2006.

There is no need to submit this additional detail to support Verizon's estimates of the costs that it would save if the Commission granted Verizon's request for forbearance from the restrictions on sharing OI&M services. In its petition and reply comments, Verizon demonstrated the savings that it could achieve in each expense category if these restrictions were removed, including its methodology for estimating the cost savings and the percentage of costs to be saved in each category. For instance, Verizon explained that 95 percent of the section 272 affiliate's third party vendor bills for field work could be avoided by obtaining these services from the Verizon BOC, which has a fully trained network of field technicians. This information was sufficient for interested parties to comment on Verizon's petition, as demonstrated most recently by AT&T's extensive *ex*

parte filing on November 15, 2002. Itemizing the actual costs and forecast costs in each category is not necessary to validate these savings, as the overall amounts clearly are reasonable given the scope of Verizon's long distance operations.

Verizon declined to file these financial data because they are both confidential and competitively sensitive. Disclosure of this information could disadvantage the section 272 affiliate vis-à-vis its competitors in the long distance market, including your client, AT&T, which dominates the highly competitive large business market.

Your letter suggests that Verizon should file the data with the FCC subject to a request for confidentiality under section 0.459 of the Commission's rules. However, there is no assurance that the Commission would treat the information, while confidential, as meeting the standards for exemption of "trade secrets and commercial or financial information obtained from any person and privileged or confidential" under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). *See* 47 C.F.R. § 0.457(d). Furthermore, even if the Commission found that the information met the standards for Exemption 4, that finding merely would allow the Commission to refuse to grant a request for release of the information under the Freedom of Information Act. The Commission still has the power to release information that is exempt under Exemption 4. *See, e.g., Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶ 8 (1998). Consequently, there is no assurance that confidential information submitted to the Commission will be withheld from public disclosure.

Sincerely,



Joseph DiBella